

Comments re: Agenda Item V (A) Population Base - Hawaii State Reapportionment  
Commission Meeting, June 28, 2001

by Fred Rohlfing, member, Maui Advisory Council

Mr Chairman & Members of the Commission

It seems awfully early for a member of an Advisory Council from Neighbor Island hinterlands to be making comments. However, as the issues before you today for decision are time sensitive I have little choice if I want to make a point (as we attorneys say) for the record. I wish to make clear from the outset that I am speaking only for myself and not the Maui Advisory Council as a group.

Today I wish to comment, before the fact on your crucial decision on the population base for reapportionment 2001. In particular I want to go on record in favor of excluding all five categories mentioned on the agenda under V (A) from the population base. As there is ample precedent and readily available data to sustain exclusions 1, 2, 4 & 5, I will confine my remarks to the importance of exclusion No. 3 - Aliens.

The 1991 reapportionment Commission adopted a population base described as "permanent resident base" which included aliens. In its final report it concluded "aliens cannot be excluded from the census block figures at this time". Ominously, we heard last week, also that INS had yet to make numbers and locations of aliens in Hawaii available to this commission and was apparently relying on "privacy" grounds for its said denial of data.

✕ We all know that Hawaii has one of the highest alien populations in the nation. We used to be first of all the states, but CA, FL and TX seem to have passed us recently. We also know that this alien population is heavily concentrated in the central and West areas of O'ahu. We know that there are far fewer numbers of aliens on Maui and the other Neighbor Isles. We know that there are fewer aliens in districts where the Hawaiian ethnic population is high (Kailua, Oahu; Waimanalo, Nanakuli, Kauai etc). Therefore we can conclude if aliens are included in the 2001 reapportionment population base, Representative and Senate districts will be created in urban O'ahu (Central and West) where there will be markedly fewer eligible voters (e.g. citizens of our state) and hence actual voters per district than in comparable districts on the Neighbor Isles.<sup>1</sup>

✕ In effect, your selection today of the appropriate population base makes a material difference: apportionment by population (permanent residents including aliens) can and

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<sup>1</sup> Advisory Council member Jim Hall has a chart matching voter/population statistics of six Neighbor Islands district with six central and western representative districts on Oahu where total population of the six districts was relatively the same but an average of 8,500 voters elected 6 reps from the Big Is. and the same number of reps were elected by 4,500 voters from O'ahu.

in this case will result in unequally weighted votes. Put another way... fewer voters elect representatives/senators to office on Oahu than on Maui... so they are over-represented in the legislature while Maui's voter is under represented. The same is true of a genuinely identifiable minority ethnic/cultural group – the Hawaiians (which should give many a liberal Democrat some pause for reflection).

While I will try not to go into too much detail there is a most eye-opening opinion in an early 90's 9th Circuit case which commissioners might wish to read and consider before voting on the alien exclusion issue. The case is Garza v. County of Los Angeles. 918 F.2d 763. A Concurring and Dissenting, in part opinion by Circuit Judge Kozinski extensively discusses Supreme Court decisions from Reynolds v. Sims on and speaks eloquently in favor of the principle of electoral equality. This principle recognizes that electors—persons eligible to vote—are the ones who hold the ultimate political power in our democracy. As Kozinski points out "This is an important power reserved only to certain members of society; states are not required to bestow it upon aliens, transients, short-term residents, persons convicted of crime, or those considered too young... The principle of electoral equality assures that regardless of the size of the whole body of constituents, political power, as defined by the number of those eligible to vote, is equalized as between districts holding the same number of representatives. It also assures that those eligible to vote do not suffer dilution of that important right by having their vote given less weight than that of electors in another location".

Kozinski, goes on to note:

"It is very difficult, in my view to read the Supreme Court's pronouncements in this area without concluding that what lies at the core of one person one vote is the principle of electoral equality. not that of equality of representation" and

"...a careful reading of the (Supreme) Court's opinions suggests that equalizing total population is viewed not an end in itself, but as a means of achieving electoral equality" (citing Reynolds : "the overriding objective must be substantial equality of population among the various districts so that the vote of any citizen is approximately equal in weight to that of any other citizen in he state" P 579, 84 S. Ct at 1390. (Emphasis added).

I am aware that our State Constitution was amended to allow the use of "total number(s) of permanent residents in each of the basic island unit "for apportionment purposes. It is not the first time, though we may be out of sync with the mainstream decisions of the Supreme Court. It is worth noting that the Court said it was OK for Hawaii to use a base of "registered voters" in Burns v. Richardson. What IS important now is what the Supreme Court would say today given numerous decisions in the wake of Reynolds v. Sims.<sup>2</sup>

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<sup>2</sup> One striking example – the Court's statement in Hadley v. Jr. College District (397 U.S. at 52) that: "[T]he Fourteenth Amendment requires that the trustees of this... district be apportioned in a manner that does not deprive any voter of his right to have his own vote given as much weight, as far as practicable, as that of any other voter in the ... district. " "The states are required to insure that each person's vote counts as muc, in so far as practicable, as any other persons>" (397 US at 54)

The bottom line therefore is that if "one person one vote" is to have constitutional validity it must protect a right uniquely held by citizens - and it would be a dilution of that right to permit non-citizens (aliens) to share therein.

As for how we get the information from INS... (e.g. where the aliens live).....I for one feel that this Commission should proceed to exhaust all of its remedies in such an effort before rolling over. It should start with a political effort, of course (we have a pretty senior Democrat Senator in Washington). If need be a Freedom of Information lawsuit could be filed and expedited by our federal courts In my view, if we're going to do this thing - lets do it right!

# THE ROTTEN BOROUGHS OF OAHU

## DO THEY MATCH UP WITH THE NEIGHBOR ISLAND DISTRICTS?

### SIX (6) BIG ISLAND DISTRICTS REGISTRATION & TURN-OUT & 2000 CENSUS - TOTAL POPULATION (Unadjusted)

DIST. NO.	AREA	TOTAL POP	REGIS.	TURN-OUT	INCUMBENT
1.	(Hamakua/N.Kohala)	22,517	12,258	7,705	Democrat
2.	(S. Hilo)	21,975	12,781	7,734	Democrat
3.	(S.Hilo/Puna)	23,544	14,184	9,706	Democrat
4.	(Ka'u/Puna)	30,378	15,632	9,248	Democrat
5.	(N. & S.Kona)	23,031	14,375	8,367	Republican
6.	(S.Kohala/N.Kona)	27,232	15,191	8,628	Republican
Totals		148,677	83,421	51,386	Six Reps
Average		24,780	13,904	8,564	

### EIGHT (8) MAUI/KAUAI DISTRICTS - REGISTRATION & TURN-OUT & 2000 CENSUS - TOTAL POPULATION (Unadjusted)

DIST. NO.	AREA	TOTAL POP.	REGIS.	TURN-OUT	INCUMBENT
7.	(Lahaina-Molokai)	21,173	11,501	6,015	Republican
8.	(Waiehu/Napili)	25,181	13,312	6,961	Democrat
9.	(Kahului/Wailuku)	23,395	11,926	7,560	Democrat
10.	(Puunene/Kula)	21,918	13,438	7,821	Republican
11.	(S. Maui)	26,727	17,327	8,259	Republican
12.	(Maui-Kauai)	25,533	14,787	8,525	Democrat
13.	(Lihue/Kapaa)	21,209	12,737	8,247	Democrat
14.	(Koloa/Waimea)	21,568	12,955	8,521	Democrat
Totals		186,704	107,983	61,909	Eight Reps
Average:		23,338	13,498	7,739	

### SIX (6) OAHU DISTRICTS - LOWEST REGISTRATION & TURN-OUT (2000) & 2000 CENSUS - TOTAL POPULATION (Unadjusted)

DIST. NO.	AREA	TOTAL POP.	REGIS.	TURN-OUT	INCUMBENT
30.	(Kalihi Kai, Mapunapuna)	17,766	7,813	3,524	Democrat
29.	(Kalihi/Moanalua)	21,344	8,331	4,432	Democrat
44.	(Makaha/Waianae)	21,732	9,733	4,484	Republican
43.	(Nanakuli/Maili)	24,990	9,756	4,430	Democrat
32.	(Aiea/Salt Lake)	39,436	10,356	4,761	Republican
22.	(McCully/Moilili)	18,364	9,069	4,920	Democrat
Totals		143,632	55,058	26,551	Six Representatives
Average:		23,939	9,176	4,425	

**PLEASE NOTE:** An average of 8,564 voters per district elected 6 representatives on the Big Island and an average of 4,425 voters in the "rotten boroughs" elected 6 representatives! On Maui/Kauai, an average of 7,739 voters per district elected 8 representatives! Also note: Avg. district total population relatively the same.

U.S. SUPREME COURT OPINIONS  
RE: ONE MAN ONE VOTE

## U.S. Supreme Court re: One Man One Vote

*\*Apportionment by proportion of eligible voters serves the principle of electoral equality. This principle recognizes that electors -- persons eligible to vote -- are the ones who hold the ultimate political power in our democracy. This is an important power reserved only to certain members of society; states are not required to bestow it upon aliens, transients, short-term residents, persons convicted of crime, or those considered too young.*

Rotunda & J.N. Young Constitutional Law at 722-23 (3d ed. 1986)

### Reynolds v. Sims

"Weighting the votes of *citizens* differently, by any method or means, merely because of where they happen to reside hardly seems justifiable." 377 U.S. at 563, 84 S.Ct. at 1382

"With respect to the allocation of legislative representation, all *voters*, as *citizens* of a State, stand in the same relation regardless of where they live." Id. At 565, 84 S. Ct. at 1383

"Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of *citizens* living in other parts of the State." Id. At 568m 84 S.Ct. at 1385

"...the basic principle of representative government remains, and must remain, unchanged -- the weight of a *citizen's* vote cannot be made to depend on where he lives..." id. At 567, 84 S.Ct. at 1384

"[T]he judicial focus must be concentrated upon ascertaining whether there has been any discrimination against certain of the State's *citizens* which constitutes an impermissible impairment of their constitutionally protected right to vote." 377 U.s. at 561m 84 S.Cit. at 1381.

"Full and effective participation by all *citizens* in state government requires, therefore, that each *citizen* have an equally effective voice in the election of members of his state legislature." Id. At 565, 84 S.Ct. at 1383.

"And the right of suffrage can be denied by a debasement or dilution of the weight of a *citizen's* vote just as effectively as by wholly prohibiting the free exercise of the franchise." Id. At 555, 84 S.Ct. at 1378.

"[t]o the extent that a *citizen's* right to vote is debased, he is that much less a *citizen*." Id. At 567, 84 S.Ct. at 1384.

### Wesberry v Sanders

"To say that a vote is worth more in one district than in another would not only run counter to our fundamental ideas of democratic government, it would cast aside the principle of a House of Representatives elected 'by the people.' " 376 U.S. 1, 8, 84 S.Ct. 526, 530, 11 L.Ed. 2d 481 (1964)

### Gray v. Sanders

"Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote -- whatever their race, whatever their sex, whatever their occupation, whatever their income, and where their home may be in that geographical unit. " 372 U.S. 368, 379, 83 S. Ct. 801, 808, 9 L.Ed.2d 821 (1963)

"Once a State has decided to use the process of popular election and 'once the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting power may be evaded.' " 372 U.S. at 381, 83 St.Ct. at 809

### Hadley v. Junior College Distr.

"[W]hen members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as is practicable, that equal numbers of *voters* can vote for proportionally equal numbers of officials." 397 U.S. 50m 56, 90 S. Ct. 791m 795, 25 L.Ed. 2d 45 (1970)

""[T]he Fourteenth Amendment requires that the trustees of this junior college district be apportioned in a manner that does not deprive any *voter* of his right to have his own vote given as much weight, as far as is practicable, as that of any other *voter* in the junior college district." 397 U.S. at 52, 90 S.Ct. at 792.

"[A] qualified *voter* has a constitutional right to vote in elections without having his vote wrongfully denied, debased, or diluted." Id.

"This Court has consistently held in a long series of cases, that in situations involving elections, the States are required to insure that *each person's vote* counts as much, insofar as it is practicable, as any other person's." Id at 54, 90 S.Ct. at 794

### **Chapman v. Meier**

"All *citizens* are affected when an apportionment plan provides disproportionate voting strength, and *citizens* in districts that are underrepresented lose something even if they do not belong to a specific minority group." 420 U.S. 1m 24m 95 S. Ct. 751m 764m 42 L.Ed.2d 766 (1975)

### **Lockport v. Citizens for Community Action**

"[I]n voting for their legislators, all *citizens* have an equal interest in representative democracy, and ... the concept of equal protection therefore requires that their votes be given equal weight." 430 U.S. 259, 265m 97 S. Ct. 1047, 1052, 51 L.Ed. 2d 313 (1977)

### **Board of Estimate v. Morris**

"In calculating the deviation among districts, the relevant inquiry is whether 'the vote of any *citizen* is approximately equal in weight to that of any other *citizen*.' " 489 U.S. 688, 109 S.Ct. 1433, 1441, 103 L.Ed.2d 717 (1989)

"The personal right to vote is a value in itself, and a *citizen* is, without more and without mathematically calculating his power to determine the outcome of an election, shortchanged if he may vote for only one representative when *citizens* in a neighboring district, of equal population vote for two; or to put it another way, if he may vote for one representative and the *voters* in another district half the size also elect one representative." Morris, 109 S.Ct. at 1440

### **Burns v. Richardson**

"The dispute over use of distribution according to registered voters as a basis for Hawaiian apportionment arises because of the sizable differences in results produced by the distribution in contrast to that produced by the distribution according to the State's total population, as measured by the federal census figures. In 1960 Oahu's share of Hawaii's total population was 79%. Its share of persons actually registered was 73%. On the basis of total population, Oahu would be assigned 40 members of the 51-member house of representatives on the basis of registered voters it would be entitled to 37 representatives. Probably because of uneven distribution of military residents - largely unregistered - the differences among various districts on Oahu are even more striking. For example, on a total population basis, Oahu's ninth and tenth representative districts would be entitled to 11 representatives, and the fifteenth and sixteenth representative districts would be entitled to eight. On a registered voter basis, however, the ninth and tenth districts claim only six representatives and the fifteenth and sixteenth districts are entitled to 10.

"The holding in Reynolds v. Sims, as we characterized it in the other cases decided on the same day, is that "both houses of a bicameral state legislature must be apportioned substantially on a population basis. " *We start with the proposition that the*



*Equal Protection Clause does not require the States to use total population figures derived from the federal census as the standard by which this substantial population equivalency is to be measured.* Although total population figures were in fact the basis of comparison in that case and most of the others decided that day, *our discussion carefully left open the question what population was being referred to.* At several points, we discussed substantial equivalence in terms of voter population or citizen population, making no distinction between the acceptability of such a test and a test based on total population. Indeed, in *WMCA, Inc. v. Lorenzo* 377 U.S. 633, decided the same day, we treated an apportionment based upon United States citizen population as presenting problems no different from apportionment using a total population measure. *Neither in Reynolds v. Sims nor in any other decision has the Court suggested that the State are required to include aliens, transients, short-term or temporary residents, or persons denied the vote for conviction of crime, in the apportionment base by which their legislators are distributed and against which compliance with the Equal Protection Clause is to be measured.* The decision to include or exclude any such group involves choices about the nature of representation with which we have been with which we have been shown no constitutionally founded reason to interfere. Unless a choice is one the Constitution forbids, cf., e.g., *Carrington v. Rash* 380 U.S. 89, the resulting apportionment base offends no constitutional bar, and compliance with the rule established in *Reynolds v. Sims* is to be measured thereby. *Burns v. Richardson*, supra 384 U.S. at 73.

### More Reynolds v. Sims

"Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system. It could hardly be gainsaid that a constitutional claim had been asserted by an allegation that certain otherwise *qualified voters* had been entirely prohibited from voting for members of their state legislature. And, if a State should provide that the *votes of citizens* in one part of the State should be given two times, or five times, or 10 times the weight of *votes of citizens* in another part of the State, it could hardly be contended that the right to vote of those residing in the disfavored areas had not been effectively diluted. It would appear extraordinary to suggest that a State could be constitutionally permitted to enact a law providing that certain of the State's *voters* could vote two, five, or 10 times for their legislative representatives, while *voters* living elsewhere could vote only once. And it is inconceivable that a state law to the effect that, in counting votes for legislators, the *votes* of citizens in one part of the State would be multiplied by two, five, or 10, while the *votes* of persons in another area would be counted only at face value, could be constitutionally sustainable. Of course, the effect of state legislative districting schemes which give the same number of representatives to unequal numbers of constituents is identical. Overweighting and overvaluation of the votes of those living here has the certain effect of dilution and undervaluation of the votes of those living there. The resulting discrimination against those *individual voters* living in disfavored areas is easily

demonstrable mathematically. Their right to vote is simply not the same right to vote as that of those living in a favored part of the State. Two, five, or 10 of them must vote before the effect of their voting is equivalent to that of their favored neighbor. Weighting the *votes of citizens* differently, by any method or means, merely because of where they happen to reside, hardly seems justifiable. One must be ever aware that the Constitution forbids "sophisticated as well as simple-minded modes of discrimination." *Lane v. Wilson* 307 U.S. 268, 275; *Gomillion v. Lightfoot*, 364 U.S. 339, 342. *Id.*, 377 U.S. at 562-563.

**League of Women Voters**  
49 S Hotel St. Rm 314 Honolulu, HI 96813  
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June 24, 2001

**received**  
6/27/01  
3:05 pm

Reapportionment Commission  
State Capitol  
Honolulu, HI 96813

Dear Sirs,

This is to request reconsideration of some points in the otherwise good draft "Analysis of Single-Member vs. Multi-Member Districts."

We do not take a position on the issue of single-member vs. multi-member districts. We only ask that the issue be given fair and impartial consideration. The draft analysis generally addresses the issues in a thorough and balanced manner, including issues of Constitutionality and minority representation.. However in the analysis of at-large districts on page 3 and multi-member districts on page 4, one of the negative items is "Is competitive and expensive to run for office."

From our viewpoint, the more competition for office, the better. It encourages a broader selection of candidates and widens discussion of different issues from different perspectives. However, we do agree that races being more expensive is a drawback. Therefore, we would suggest that the "competitive" part of this point be put included in the "pro" list, while the "expensive" part be left on the "con" list.

There are also some questionable items on the 'pro' list for single member districts on page 5:

- Allows incumbents to maintain a political base, to provide services, and become harder to beat.
- Legislators prefer single-member districts for reelection purposes...
- Safer for incumbents."

Whether these are positive or negative would depend on one's point of view. Furthermore, fairness dictates that the election system should not be skewed toward incumbents or challengers. For the purposes of the discussion of single-member or multi-member districts, it might be better to list these as likely effects and not characterize them as pros or cons..

We would also like to take this occasion to applaud the fairness and openness with which the commission has been conducting its business.

Mahalo for your consideration.

Sincerely yours,

*Jean Aoki*  
Jean Aoki, LWV Legislative Director

*Larry Meacham*  
Larry Meacham, CCH Spokesperson

**received**  
6/28/01

**United States Department of the Interior**  
**NATIONAL PARK SERVICE**

Haleakalā National Park

PO Box 369

Makawao, HI 96768

IN REPLY REFER TO:

June 27, 2001

**MEMORANDUM**

**To:** State Reapportionment Committee  
**From:** Chief Ranger  
**Subject:** Voting District Designations for Haleakala National Park

Please readjust the voting districts for employees living within Haleakalā National Park as follows:

Summit Area – to vote with Kula District

Kipahulu Area – to vote with the Hana District.

Presently there are park residents only in the Summit area of Haleakala National Park. If these individuals correctly report their physical address, they are registered to vote in Keanae. The 6 hour round trip is prohibitive. Additionally, the physical distance from that community is such that there is minimal affinity between these park residents and the Keanae community. Potentially 15 employees may be affected. [Some of these individuals have obtained Rural Route addresses in Kula or elsewhere to avoid having to vote in Keanae.]

Presently there are no residents living in the Kipahulu area of Haleakala National Park, however long term plans call for up to 4 residences to be constructed within the next 5 years. Therefore, rather than treating Haleakala National Park as one entity, please specify those in the Kipahulu area to vote with the neighboring Kipahulu/Hana community. I recommend that the park be divided at the roughly North South line from Pohaku Palaha to Kuiki Ridge, and that national park residents east of that line vote with the Hana/Kipahulu community.

Mahalo for your kokua.

Karen Newton